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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
December Term, 1980

NO. 80-5920

VICTOR E. GOODE, APPELLANT

vs

STATE OF OHIO, APPELLEE

APPENDIX TO JURISDICTION STATEMENT

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IN THE SUPREME COURT OF THE STATE OF OHIO

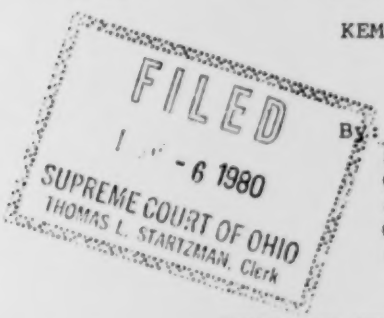
VICTOR E. GOODE,	:	
Appellant	:	
-vs-	:	CASE NO. 80-845
STATE OF OHIO,	:	
Appellee.	:	

NOTICE OF APPEAL
TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA

Notice is hereby given that Victor E. Goode, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Ohio, dismissing the appeal, entered herein on September 12, 1980.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

KEMP, SCHAEFFER & ROWE CO., L.P.A.



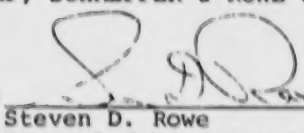
By: _____
Steven D. Rowe
Counsel for Appellant
45 North Wilson Road
Columbus, OH 43204
(614) 276-2678

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the within Notice of Appeal to the Supreme Court of the United States was directed to Michael DeWine, Greene County Prosecutor, Counsel for Appellee, Courthouse, Xenia, Ohio 45385, by depositing same in the U.S. Mail, postage prepaid, on this 4 day of

November, 1980.

KEMP, SCHAEFFER & ROWE CO., L.P.A.

By: 

Steven D. Rowe
Counsel for Appellant

SC-103 79-10-1 BARRETT BROTHERS PUBLISHERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 80 *TERM*

To wit: SEP 12 1980

State of Ohio,
Appellee,

vs.

Victor E. Goode,
Appellant.

No. 80-845

APPEAL FROM THE COURT OF APPEALS

for GREENE *County*

This cause, here on appeal as of right from the Court of Appeals for GREENE *County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.*

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for GREENE *County for entry.*

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this.....day of..... 19.....

.....*Clerk*

.....*Deputy*

SC78 BARRETT BROTHERS, PRINTERS, SPRINGFIELD, OHIO

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

19 80 *TERM*

To wit: SEP 12 1980

State of Ohio,
Appellee,
vs.
Victor E. Goode,
Appellant.

80-845
No.

MOTION FOR LEAVE TO APPEAL FROM THE COURT OF APPEALS

for GREENE *County*

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00, paid by Kemp, Schaeffer and Rowe

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this .....*day of* ..... *19*.....

.....*Clerk*

.....*Deputy*

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO
SECOND APPELLATE DISTRICT

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

VICTOR E. GOODE

DEFENDANT-APPELLANT

GREENE COUNTY OF OHIO
FILED
CASE NO. CA 1107
MAY 15 1980
COURT OF APPEALS
CLERK OF COURTS

NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Victor E. Goode, Defendant-Appellant, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Court of Appeals of Greene County, Ohio, Second Appellate District, entered in the journal on April 24, 1980, affirming the judgment of the Court of Common Pleas, Greene County, Ohio for the Plaintiff-Appellee, State of Ohio.

This case involves substantial Constitutional issues and is a case of public and great general interest.

Respectfully submitted

KEMP, SCHAEFFER & ROWE CO., L.P.A.

Steven D. Rowe

Steven D. Rowe
Attorney for Defendant-Appellant
45 North Wilson Road
Columbus, Ohio 43204
Telephone: 614-276-2678

Michael DeWine
Greene County Prosecutor
Attorney for Plaintiff-Appellee
Greene County Court House
Xenia, Ohio 45385
Telephone: 513-372-4461

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Notice Appeal to the Supreme Court of Ohio has been mailed, first class, postage prepaid to Plaintiff-Appellee, through its counsel, Michael DeWine, Greene County Prosecutor, Greene County Courthouse, Xenia, OH 45285 this 13th day of May, 1980.

KEMP, SCHAEFFER & ROWE CO., L.P.A.

By: Steven D Rowe
Steven D. Rowe
Attorney for Defendant-Appellant
45 North Wilson Road
Columbus, OH 43204
(614) 276-2678

MAY 2 5 1980

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	
vs.	:	Case No. CA 1107
VICTOR E. GOODE	:	JOURNAL ENTRY
Defendant-Appellant	:	

Pursuant to the decision rendered by this court on April 15, 1980, the judgment of the Court of Common Pleas of Greene County is hereby affirmed.

Judge McBride

Judge Kerns

Judge Phillips

Dated: April 24, 1980

Copies mailed to:

Michael DeWine, Prosecuting Attorney

Steven D. Rowe, Attorney at Law

APR 15 1980

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

vs. : Case No. CA 1107

VICTOR E. GOODE :

Defendant-Appellant :

.....

OPINION

Rendered on the 15th day of April, 1980.

.....

Michael DeWine, Prosecuting Attorney, Court House, Xenia, Ohio 45385
Attorney for Plaintiff-Appellee

Steven D. Rowe, Attorney at Law, 45 North Wilson Road, Columbus, Ohio 43204
Attorney for Defendant-Appellant

.....

BY THE COURT:

This case appears in this court a second time. During its initial appearance, and while considering numerous assignments of error, this court commented upon one of the alleged errors as follows:

> "The second assignment of error alludes to the action of the trial court in overruling a motion of the defendant for a transcript of the testimony taken in the Juvenile Court in the case of a co-defendant, Richard Mayes.
>
> As argued by the State, Juvenile Rule 37(B) restricts the use which may be made of a transcript of any juvenile court hearing. However, in State v. Cox, 42 Ohio St. 2d 200, the Ohio Supreme Court had occasion to consider that restriction when it came in conflict with the rights of an adult defendant

preparing for trial. Although the facts in the Cox case are somewhat different from those of the present case, the basic principles involved appear to be the same.

In that case, the court considered Section 2151.368, Revised Code, which is a similar import as Juvenile Rule 37(B), and said:

> 'Although the General Assembly may enact legislation to effectuate its policy of protecting the confidentiality of juvenile records, such enactments may not impinge upon the right of a defendant in a criminal case to present all available, relevant and probative evidence which is pertinent to a specific and material aspect of his defense.'

In the Cox case, the Supreme Court of Ohio relied to some extent upon Davis v. Alaska, 415 U.S. 308, where the Supreme Court of the United States made the following observation:

> 'The state's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness.'

In the present case, the complaining witness was the only person present at the time of the offense other than the two defendants, and she had testified against the juvenile defendant, Hayes, at his trial in Juvenile Court. The defense requested a transcript of her testimony, but the request was overruled on May 18, 1978. Subsequently, on June 8, 1978, a motion for a reconsideration of the initial request was likewise overruled.

In our opinion, this case is subject to the principles discussed in State v. White, 15 Ohio St. 2d 146, where the court said:

> '5. Where in a criminal case, a trial court has refused an in camera inspection to determine whether there are inconsistencies in the statements of a witness, a judgment of conviction should be reversed and the cause remanded for an inspection and hearing on the evidence contained in such statements. If the trial court, on remand, finds

> that such discrepancies existed and prohibited defendant from receiving a fair trial and denied him due process of law, it should order a new trial.'
>
> Accordingly, a final disposition of this alleged error must await a remand to the Court of Common Pleas for the purpose of determining whether a denial of the right to inspect the juvenile proceedings resulted in actual prejudice to the rights of the appellant or otherwise prevented him from receiving a fair trial."

After reviewing and overruling the other assignments of error, the court at that time proceeded further as follows:

> "At this juncture, the record in the present case does not portray prejudicial error, but in accordance with the procedural recommendations of State v. White, 15 Ohio St. 2d 146:159; State v. White, 27 Ohio St. 2d 73, the judgment will be reversed, with the limitations expressed in White, and the case remanded to the Court of Common Pleas for further proceedings in accordance with the instructions included in this opinion under the second assignment of error for the production, inspection and hearing on the testimony of the witness in the Juvenile Court. If the trial court on remand finds that discrepancies existed and that such discrepancies prohibited defendant from receiving a fair trial and denied him due process of law, it should order a new trial. On the contrary, if on remand the trial court finds that discrepancies do not exist or, if they exist, that the discrepancies did not prohibit defendant from receiving a fair trial, it should affirm the verdict and deny a new trial. In event of the latter, a new appeal may be filed on that judgment."

Subsequently, upon remand, the Common Pleas Court determined that the previous testimony of the witness in Juvenile Court was devoid of any inconsistency or variation which could have prevented the defendant from receiving a fair trial and due process of law, and in accordance with this finding, the trial court denied Goode a new trial.

Upon examination of the record, the second assignment

of error, which was held in abeyance pending compliance with the procedural recommendations of the White case, is overruled, and all of the other alleged errors having been considered and overruled in our decision of April 24, 1979, the judgment of the Court of Common Pleas of Greene County will be affirmed.

McBRIDE, P. J., KERNS and PHILLIPS, JJ. concur.

.....

FILED

JUL 22 P 3:31

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO

Plaintiff, : CASE NO. 77 CR 186

-vs- :

VICTOR E. GOODE JUDGMENT ENTRY

Defendant. :

- - -

The Court, on May 29, 1979, reviewed the two transcripts in question and put on an Entry to the effect that the Court, after its examination finds the testimony in both transcripts identical as to the elements of the crime and the factual description of the evening.

After objections of Defendant's attorney, an additional hearing was held on this matter, wherein the transcript of the Juvenile case was furnished to the attorney for the Defendant and State of Ohio, with an opportunity to submit their memorandum and objections, which they have done, on July 3, 1979 for the Defendant and July 17, 1979 for the Prosecution.

The Court does not find the objections of the Defendant well taken and OVERRULES same and hereby AFFIRMS its own Judgment Entry of May 29, 1979.

JUDGE EDWARD R. KIMMEL

FILED

79 JUN 14 A 9:22

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

CLERK
COURT
GREENE COUNTY

STATE OF OHIO

Plaintiff, : CASE NO. 77 CR 186

-vs- :

VICTOR GOODE : JUDGMENT ENTRY

Defendant. :

- - -

An In Camera hearing was held on June 13, 1979 on Defendant's motion requesting the Court to reconsider its Judgment entered on May 29, 1979.

Present were Michael Dewine on behalf of the State of Ohio and Steven Rowe on behalf of the Defendant.

Oral arguments were presented by both the State of Ohio and Defense Counsel.

The Defendant is granted ten (10) days to file a brief in support of this motion, and the Prosecutor is granted ten (10) days from filing of said brief in which to file a responsive brief.

JUDGE EDWARD B. KIMMEL

FILED

MAY 29 A10: 08 03

CLERK

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO

Plaintiff, : CASE NO. 77 CR 186

-vs- : CA NO. 1025

VICTOR GOODE : JUDGMENT ENTRY

Defendant. :

- - -

The Court, pursuant to the Judgment of the Court of Appeals has compared the transcript in the Juvenile Court Case of the co-Defendant, Richard Mayes, wherein the co-Defendant, Richard Mayes, was on trial and the case which is the subject matter of this litigation, wherein the complaining witness in the rape case was identical.

The Court, after its examination finds the testimony in both transcripts identical as to the elements of the crime and the factual description of the evening.

The Court shall attach to the Clerk of the Court of Appeals the two transcripts in question in a sealed envelope, marked Court's Exhibit "1".

JUDGE EDWARD R. KIMMEL

IN THE COURT OF APPEAL' OF GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

vs. : Case No. CA 1025

VICTOR E. GOODE : JOURNAL ENTRY

Defendant-Appellant :

.....

Pursuant to the decision rendered by this court on April 24, 1979, the judgment is hereby reversed and the case remanded to the Court of Common Pleas of Greene County for further proceedings according to the instructions included in the decision under the second assignment of error for the production, inspection and hearing of the testimony of the witness in the Juvenile Court.

Dated: May 14, 1979

Copies mailed to:

Michael DeWine, Prosecuting Attorney

Steven D. Rowe, Attorney at Law

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee :

vs. : Case No. CA 1025

VICTOR E. GOODE :

Defendant-Appellant :

.....

OPINION

Rendered on the 24th day of April, 1979.

.....

Michael DeWine, Prosecuting Attorney, Greene County, Greene County Court House, Xenia, Ohio 45385
Attorney for Plaintiff-Appellee

Steven D. Rowe, Attorney at Law, 45 North Wilson Road, Columbus, Ohio 43204
Attorney for Defendant-Appellant

.....

BY THE COURT:

The defendant, Victor E. Goode, was tried by jury in the Court of Common Pleas of Greene County and found guilty of rape in violation of Section 2907.02(A)(1), Revised Code, and from the judgment and sentence thereupon entered in the trial court, Goode has appealed to this court.

The first assignment of error challenges the overruling of a motion of the defendant for a change of venue. The motion was filed on March 2, 1978 and overruled on March 7, 1978.

The motion for a change of venue was accompanied by six short articles from local newspapers about the rape, three of which referred to the arrest and indictment of the appellant

for the crime. Another of the articles reported that a juvenile co-defendant had been processed and committed by the Juvenile Court for the crime.

Prior to the voir dire examination of the jury, the appellant brought the matter up again, after which the court asked the entire panel if anyone had read the articles. One prospective juror said that she might have read about it, but indicated that she remembered nothing about the incident. The appellant later used a peremptory challenge to remove her. This was the only prospective juror who responded to the general question of the court, but later, a Mr. Stalter indicated to the prosecuting attorney that he read the paper from cover to cover, but did not recall this case. The appellant did not question this juror and did not remove him, but the defense did otherwise exhaust all peremptory challenges.

According to Rule 18(B) of the Rules of Criminal Procedure, a change of venue may be granted "when it appears that a fair and impartial trial cannot be had", but here, the facts disclose that the articles in the newspaper were small, few in number, and had appeared long before the trial. Furthermore, none of the jurors remembered reading about the case, and the record is devoid of any showing that the trial court abused its discretion in overruling the motion for a change of venue. See, State v. Fairbanks, 32 Ohio St. 2d 39. The first assignment of error is overruled.

The second assignment of error alludes to the action

of the trial court in overruling a motion of the defendant for a transcript of the testimony taken in the Juvenile Court in the case of a co-defendant, Richard Mayes.

As argued by the State, Juvenile Rule 37(B) restricts the use which may be made of a transcript of any juvenile court hearing. However, in State v. Cox, 42 Ohio St. 2d 200, the Ohio Supreme Court had occasion to consider that restriction when it came in conflict with the rights of an adult defendant preparing for trial. Although the facts in the Cox case are somewhat different from those of the present case, the basic principles involved appear to be the same.

In that case, the court considered Section 2151.358, Revised Code, which is of similar import as Juvenile Rule 37(B), and said:

> "Although the General Assembly may enact legislation to effectuate its policy of protecting the confidentiality of juvenile records, such enactments may not impinge upon the right of a defendant in a criminal case to present all available, relevant and probative evidence which is pertinent to a specific and material aspect of his defense."

In the Cox case, the Supreme Court of Ohio relied to some extent upon Davis v. Alaska, 415 U.S. 308, where the Supreme Court of the United States made the following observation:

> "The state's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness."

In the present case, the complaining witness was the only person present at the time of the offense other than the two defendants, and she had testified against the juvenile defendant,

Mayes, at his trial in Juvenile Court. The defense requested a transcript of her testimony, but the request was overruled on May 18, 1978. Subsequently, on June 8, 1978, a motion for a reconsideration of the initial request was likewise overruled.

In our opinion, this case is subject to the principles discussed in State v. White, 15 Ohio St. 2d 146, where the court said:

> "5. Where in a criminal case, a trial court has refused an in camera inspection to determine whether there are inconsistencies in the statements of a witness, a judgment of conviction should be reversed and the cause remanded for an inspection and hearing on the evidence contained in such statements. If the trial court, on remand, finds that such discrepancies existed and prohibited defendant from receiving a fair trial and denied him due process of law, it should order a new trial."

Accordingly, a final disposition of this alleged error must await a remand to the Court of Common Pleas for the purpose of determining whether a denial of the right to inspect the juvenile proceedings resulted in actual prejudice to the rights of the appellant or otherwise prevented him from receiving a fair trial.

The third assignment of error is stated as follows:

> "The trial court committed prejudicial error in overruling the motion of defendant for a mistrial after Detective Sgt. Wager testified concerning the status of the defendant as a parolee."

During the direct examination of the police detective who went to Columbus to arrest the appellant after he had obtained a warrant for his arrest as a result of his investigation of the complaint, the following occurred:

"Q. Okay. After receiving the arrest warrant and the complaint, what did you do?

A. I went to Columbus.

Q. Okay. Did you go alone or did you have another officer with you.

A. I took another officer with me, Detective Siler.

Q. And can you tell us what you did next, Detective, in regard to this investigation?

A. We made contact with the Columbus Police Department in an effort to obtain a current address of Victor Goode and Richard Mayes. I made contact, I finally found out Victor Goode's address by talking to his parole officer, Mr. Garner and he advised us of his new address.

MR. ROWE: Objection, Your Honor. May we approach the bench?"

In chambers, the appellant moved for a mistrial. This was refused and the court immediately instructed the jury, as requested by the appellant, as follows:

"Ladies and gentlemen of the jury, the court at this time instructs you to totally disregard the last statement of this witness and consider it for no purpose. You may proceed."

It has been held that when improper evidence has been erroneously admitted, the trial court's admonition to the jury to disregard it cures the error unless the objectionable matter is excessively inflammatory. State v. Davis, 44 Ohio App. 2d 335.

It has also been held that where the court sustained an objection to the evidence and promptly instructed the jury to disregard it, the action of the court in refusing to order a mistrial is not error unless it is patent that the jury disregarded the instructions. State v. Holt, 17 Ohio St. 2d 81. See also, State v. Andlauer, 71 Ohio Law Abs. 449; State v. Ross,

70 Ohio Law Abs. 525; 4 Ohio Jurisprudence 2d 139, Section 905.

Here, the improper evidence apparently came before the jury inadvertently, and upon a review of the entire record, we cannot say that the reference to the "parole officer" denied the appellant a fair trial. Ordinarily, a mistrial should not be ordered and the jury discharged in a criminal case unless the substantial rights of the accused are prejudiced thereby. 15A Ohio Jurisprudence 2d 438, Section 371. The alleged error is overruled.

The fourth assignment of error is dependent upon facts which gave rise to the fifth and sixth assignments of error, and for this reason, it will be considered out of order.

The fifth and sixth assignments of error are as follows:

"5. The trial court committed prejudicial error in applying R.C. 2907.02(D) to certain proffered testimony concerning the prosecuting witness Karen Sherlock.

6. The trial court committed prejudicial error in sustaining the constitutionality of R.C. 2907.02(D) in that the statute is unconstitutional on its face and as applied to the circumstances of this case."

Prior to the commencement of the trial, the appellant proffered certain evidence, the admissibility of which was denied by the trial court. The evidence proffered and refused was that the complaining witness had been living with a man and had been having sexual intercourse with him five or six times a week, the last time on December 7, 1977, which was only twelve days prior to the rape. Other evidence sought to be introduced was that the complaining witness had had an abortion in June, 1977. The

appellant proposed to introduce the evidence through a statement the complainant had made to a detective wherein she admitted these alleged facts.

The trial court ruled that such evidence was subject to the prohibitions of Section 2907.02(D), Revised Code, which reads as follows:

> "Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender."

A reasonable interpretation of the wording of the statute shows its intendment and supports the conclusion of the trial court. Hence, the fifth assignment of error is overruled.

With reference to the additional claim that the statute is unconstitutional, this court has already rejected the due process and equal protection arguments in the cases of State v. Moody, Montgomery County Court of Appeals, No. 5270 (May 20, 1977) and State v. Johnson, Greene County Court of Appeals, No. 940 (December 15, 1977). The sixth assignment of error is likewise overruled.

Reverting to the fourth assignment of error, the appellant alleges as follows:

> "The trial court committed prejudicial error in restricting cross-examination of the prosecution's medical expert."

During the cross-examination of the physician who examined the victim after the rape, the following exchange took place:

"Q. Now, did you examine the hymen of Karen Sherlock?

A. I did a pelvic examination. That would be part of it.

MR. SCHENCK: Objection to any further questioning.

MR. DEWINE: May we approach the bench, Your Honor?

(Whereupon, a brief discussion was held at the bench off the record.)

THE COURT: The court will stand in recess. The jury is excused. Remember the admonition of the court."

In chambers, the appellant indicated that he wished to examine in this area in order to ascertain whether there was any tissue damage to the hymen which ordinarily accompanies forcible rape. The court, rightfully fearful that the use of the word hymen would lead to answers implying past sexual activity, refused to allow the use of this word but did permit questions of tissue damage to the genitals generally:

"Q. Doctor, with respect to your examination of the genitalia, is that the right pronounciation?

A. Yes.

Q. Of Karen Sherlock, did you see any swelling?

A. No.

Q. Did you see any lacerations?

A. No.

Q. Did you see any bruising?

A. No.

Q. Did you see any traumatic type of bleeding?

A. No.

Q. Did you see anything which indicated that any particular area has any trauma over and above ordinary sexual intercourse to it?

A. No."

The extent of cross-examination rests within the discretion of the trial court, and the record shows that the only purpose for introducing the word "hymen" was to get into evidence obliquely what could not be introduced directly because of the statutory prohibition. In our opinion, therefore, the trial court properly excluded this evidence of prior sexual activity. See, State v. Moody, supra.

Under the fourth assignment of error, the appellant also complains as to the court's ruling in refusing to allow counsel to read a passage from a book to the doctor which, from the proffer made, seemed to contradict an opinion of the doctor as to the longevity of sperm in the vagina, but the court's ruling was correct for two reasons. In the first place, proper foundation for impeachment was not laid since the authoritative status of the treatise sought to be read from was not established, and secondly, the method of impeachment was improper since the doctor had not relied on the work or admitted its standing as an authority. See, 60 A.L.R. 2d 77; 31 American Jurisprudence 2d 575, Sections 67 & 68; Bluebird Baking Co. V. McCarthy, 36 N.E. 2d 801. The fourth assignment of error is overruled.

The seventh assignment of error is based upon the failure of the trial court to sustain the defendant's motion to acquit, but the record discloses sufficient evidence upon every

element of the crime to warrant the submission of the case to the jury. Furthermore, the appellant did not testify or present any witnesses so as to raise any question as to the weight of the evidence. The alleged error is without merit.

The eighth assignment of error is based upon the court's reference to Section 2929.41(B)(3), Revised Code, in declaring that the sentence imposed in this case would run consecutively to any imposed as a result of the appellant's being a parole violator. Specifically, the appellant asserts that the statute is unconstitutional in that it requires cruel and unusual punishment. This alleged error is without merit and will be overruled. See, State, ex rel, Drexel v. Alvis, 66 Ohio Law Abs. 574.

At this juncture, the record in the present case does not portray prejudicial error, but in accordance with the procedural recommendations of State v. White, 15 Ohio St. 2d 146:159; State v. White, 27 Ohio St. 2d 73, the judgment will be reversed, with the limitations expressed in White, and the case remanded to the Court of Common Pleas for further proceedings in accordance with the instructions included in this opinion under the second assignment of error for the production, inspection and hearing on the testimony of the witness in the Juvenile Court. If the trial court on remand finds that discrepancies existed and that such discrepancies prohibited defendant from receiving a fair trial and denied him due process of law, it should order a new trial. On the contrary, if on remand the trial court finds that discrepancies do not exist or, if they exist, that the discrepancies

did not prohibit defendant from receiving a fair trial, it should affirm the verdict and deny a new trial. In event of the latter, a new appeal may be filed on that judgment.

The production, inspection and hearing on remand shall be held within sixty days after the filing of the final entry in this court, and the issue finally decided by the trial court within thirty days thereafter.

McBRIDE, P. J., KERNS and PHILLIPS, JJ. concur.

.....

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO

Plaintiff, : CASE NO. 77 CR 186

-vs- :

VICTOR GOODE : JUDGMENT ENTRY

Defendant. :

- - -

This matter came on to be heard on the Defendant's objection to proposed Judgment Entry and for reconsideration of prior ruling of this Court.

The first point defense counsel addressed himself to was the sentence being a consecutive sentence.

The Court finds Section 2929.41 (B)(3) mandatory. The Defendant is a Parolee and the Court has no option but to make a consecutive sentence.

The Defendant further moved the Court for an Order to furnish the transcript of the Juvenile Court for purposes of Appeal. In reading Juvenile Court Rule 37, which reads as follows:

> "Restrictions on use of recording or transcript. No public use shall be made by any person, including a party, of any juvenile court record, including the recording or a transcript thereof of any juvenile court hearing, except in the court of an appeal or as authorized by order of the court."

This Court feels the Appeal referred to in subsection (B) contemplates an Appeal on behalf of the Juvenile and not of a Co-Defendant, as in the instant case.

The motion for transcript is therefore OVERRULED.

Exceptions noted.

JUDGE EDWARD R. KIMMEL

SERVICE OF COPY: A copy hereof was served upon:

Mr. Michael DeWine, Prosecuting Attorney, Greene County, Ohio
Mr. Steven Rowe, 45 North Wilson Road, Columbus, Ohio 43204

by mail on date of file stamp hereon.

JUL 10 1979

Court Reporter

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO,	*	
Plaintiff	*	Case No. 77 CR 186
-vs-	*	
VICTOR E. GOODE,	*	
Defendant	*	JUDGMENT ENTRY
	*	

* *

This matter was scheduled for trial by jury on the 12th day of June, 1978, the Defendant having previously been indicted on the charge of Rape [O.R.C. Section 2907.02(A)(1)]. The Defendant appeared in open court, along with his attorney Steven D. Rowe. The State of Ohio was represented by Prosecuting Attorney Michael DeWine and Assistant Prosecuting Attorney William F. Schenck.

Both counsel for the State of Ohio and for the defense were given an opportunity to question prospective members of the jury. Thereupon, a jury of twelve (12) and one (1) alternate was duly impaneled and sworn.

Opening statements were made by both the State of Ohio and by the defense. Evidence was presented by the State of Ohio. Thereupon, the State rested. A motion to dismiss was made by the defense. This motion was overruled by the Court.

The defense then presented its evidence.

Closing arguments were made by the State of Ohio and by the defense. Thereupon, the Court instructed the jury as to the applicable law. Thereupon, the jury retired to deliberate their verdict.

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On the 14th day of June, 1978, the jury returned to open court and announced that they had reached a verdict. The jury announced that they had found the Defendant guilty as charged of a violation of O.R.C. Section 2907.02(A)(1), being Rape.

The jury was then excused.

The Defendant informed the Court that he did not desire a pre-sentence investigation in this matter. Counsel for both the State and the defense were given an opportunity to make a statement to the Court. The Court inquired of the Defendant and the Defendant attorney if they had anything further to say as to why the judgment of the Court should not be pronounced against the Defendant. Both the Defendant and his attorney replied that they had nothing further to say. Thereupon, the Court found that the Defendant was in fact guilty of a violation of Ohio Revised Code Section 2907.02 (A)(1). Thereupon, the Court sentenced the Defendant to the Columbus Correctional Facility, Columbus, Ohio, for a period of not less than four (4) nor more than twenty-five (25) years. No fine was imposed in this case.

Further, it is the order of this Court that this sentence shall run consecutively with any sentence previously imposed against the Defendant and which may be re-instated due to a possible violation of parole by the Defendant.

The costs of this action are assessed against the Defendant, for which execution is hereby awarded.

The Court determined that the Defendant was entitled to a credit of one hundred seventy-five (175) days against his minimum and maximum sentence. (Computed as of 6/14/78)

It is further the order of this Court that certain items of clothing belonging to the complaining witness shall be returned to the Greene County Prosecutor's Office to be returned by the Prosecutor's Office to her. These items of clothing are: a sweater, jeans, blouse, and panties, being State's Exhibits 18, 20, 21, 22, 23. It is further the order of this Court that the Court Reporter shall cause to be made a photograph of these items to be kept by the Court Reporter as part of the permanent record of this case.

6/20/78
RMD:mld

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JUDGE EDWARD KIMMEL

Michael DeWine
Prosecuting Attorney

William F. Schenck
Assistant Prosecuting Attorney

Steven D. Rowe
Attorney for the Defendant

FILED

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO

STATE OF OHIO

Plaintiff, : CASE NO. 77 CR 186

-vs- :

VICTOR E. GOODE : JUDGMENT ENTRY

Defendant. :

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Three issues were raised at the hearing held on behalf of the Defendant on May 12, 1978. They were as follows. One, the reduction of bond, two, a request for portions of the Juvenile Court transcript of the trial of the co-defendant, and three, an in camera discussion as to the applicability of 2907.02(D), as to the questions to be propounded by defense counsel to the complaining witness.

After hearing the arguments of counsel, the Court continued the bond at $25,000.00 (Twenty Five Thousand Dollars).

Established the guidelines under 2907.02(D) to be observed by defense counsel in questioning the complaining witness.

Overruled Defendant's request for transcript of the Juvenile Court proceedings, in particularity, the testimony of the complaining witness, Karen Sherlock and Dr. James Goldey.

The Juvenile Judge has previously denied this request under authority of Juvenile Rule 73(B).

This Court rules that in light of Juvenile Rule 73(B), which states:

> "Restrictions on use of recording or transcript. No public use sahll be made by any person, including a party, of any juvenile court record, including the recording or a transcript thereof of any juvenile court hearing, except in the course of an appeal or as authorized by order of the court."

The request for the portions of the juvenile transcript is DENIED.

Exceptions noted.

JUDGE EDWARD R. KIMMEL

May 6, 78

Complainant was then asked personal information concering her sexual activity and the following information was gained: She is not a virgin. She is now cohabitating with her boyfriend. She averages having intercourse five (5) or six (6) times a week (only with her boyfriend). She has never been married and does take the birth control pills. She had an abortion in June of this year and the child being that of her boyfriend. At the time of the attack and time of the interview she was on her menstrual period and the last voluntary intercourse prior to the Rape was 12-8-77.

Respectfully submitted,

Det. Sgt. E.L. Wager, #106
BEAVERCREEK POLICE DEPARTMENT

ELW/dkm